

## **HOW VACANCIES ARE FILLED AFTER THE ELECTION AND BEFORE ANNUAL TOWN MEETING BEGINS**

Following the Annual Town Election there are often seats which remain vacant. The Amherst town Government Act provides for filling some, or all of these positions. It is a multi-layered process which can only be achieved one step at a time. This is the reason why it can take up to several weeks before full membership can be determined, and what, if any, vacancies remain.

Let me use scenarios which existed following the 2008 Annual Town Election; mainly because an explanation on how those vacancies would be filled had already been prepared.

In 2008 there were five names on the ballot for Precinct 5 with eight three years positions to be filled.

Since there were only five candidates on the ballot and they all received a sufficient number of votes to be elected, they filled five of the available positions.

To fill the remaining three, the Town Clerk had to look to see, first of all, whether there were any write-ins for the three year position, and secondly to see if any of the write-ins were qualified to be elected. To be qualified they had to be registered voters in Precinct 5 and they were registered to vote prior to the deadline for the April 1, 2008 election.

Since there were three positions to fill the Town Clerk needed only to look for the next three highest vote getters from among those who were written in.

At this election there were three write-ins who received 6 votes, 5 votes, and 2 votes respectively. There were also a number of other people who received one write-in vote each.

The three people who received the highest number of votes had to be notified of their election and asked whether or not they wished to accept the position.

Two people accepted and one declined.

The two people who accepted were considered to have “won” the election and will serve until 2011 because they were written in for a three-year term.

Because the third person declined the position, the Town Clerk had to now go to the next highest vote getter. The remaining people receiving write-in votes all received one vote each. Section 1.541 of the ATGA states, *“If there is a tie vote among two (2) or more such candidates, the remaining elected members of the same precinct shall, by ballot, choose from among those tied and the winner shall serve until the next annual town election.”*

This required calling a special meeting of the remaining elected members of the precinct to be held within thirty days following the annual town election. In accordance with the above section the Town Clerk was required to mail to every such member a notice specifying the purpose, time and place of the meeting, not less than five days preceding the date scheduled.

Similarly, in Precinct 4 there were six people on the ballot. The two highest write-in vote getters each received 2 votes. Those two people were offered the seats. One declined, and the second wanted to give the situation more consideration.

In addition to these two individuals who received two votes each, several other people received one write-in vote each.

Because one had already declined there was a “known” vacancy therefore the Town Clerk had to follow the procedure outlined above. A special meeting was called so that the remaining Precinct 4 members could elect someone from among those people who received one vote each to fill the position that is known to be available.

Furthermore if the second candidate who received the highest number of votes decided not to accept the position, then the remaining town meeting members would have to elect two people from among those who received one write-in vote each.

Precinct 9, there were nine people on the ballot. Normally the eight highest vote getters would be considered the winners of the election. However, one of those elected was Diana Stein who, by her election to the Select Board, automatically became an ex-officio member of town meeting. Because that left a position available the ninth person, i.e. the candidate who received the lowest number of votes out of the nine, filled that vacancy.

Stephanie O’Keeffe was also a town meeting member in Precinct 9 with a term expiring in 2009. Stephanie’s election to the Select Board made her an ex-officio town meeting member and left a vacancy.

Because the eight candidates who were on the ballot, in addition to Diana, had all been elected to town meeting, the Town Clerk had to go to the write-ins to fill this position.

In precinct 9 there were four people who received one vote each and were found qualified. So again, a special meeting had to be held so that the remaining town meeting members in Precinct 9 could elect one of them to fill the vacancy.

These scenarios change from year to year but these three examples are fairly typical of the situations which need to be resolved each year. Following the 2009 Annual Town Election there were five precincts which had remaining vacancies. Following the process required some of those vacancies have been filled and some will be filled at the special “tie-breaker” elections scheduled.

I would recommend that those of you who are interested take the time to read Section 1.533 and 1.534; Section 1.54, (which includes 1.541 and 1.542, which includes 1.5421, 1.5422); and Section 1.543 of the Amherst Town Government Act. Section 2.211 also contains helpful information.

You can find the Amherst Town Government Act by going to the town’s website [www.amhestma.gov](http://www.amhestma.gov) and clicking on Town Government. There you will find links to the general bylaws and to the ATGA.